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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHELLE GOMEZ,

Defendant and Appellant.

E056133

(Super.Ct.No. FVI1000826)

OPINION

APPEAL from the Superior Court of San Bernardino County. Eric M. Nakata,
Judge. Affirmed.

Sharon M. Jones, under appointment by the Court of Appeal, for Defendant and
Appellant.

Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney General,
A. Natasha Cortina, and Kelley Johnson, Deputy Attorneys General, for Plaintiff and
Respondent.

I

INTRODUCTION

Defendant Michelle Gomez appeals from judgment entered following a jury conviction for first degree murder of her husband (Pen. Code, § 187, subd. (a)).¹ The jury also found true the allegation that defendant used a deadly weapon, a knife, to commit the murder (§ 12022, subd. (b)(1)). The jury further found defendant sane at the time she committed the offense. The trial court sentenced defendant to 25 years to life in prison, plus one year.

Defendant contends the trial court abused its discretion and violated her constitutional rights by admitting into evidence her extrajudicial statements to the police and by ordering defendant examined by a psychological expert retained by the prosecution. Defendant further asserts that, during the sanity phase of the trial, the prosecution failed to provide sufficient evidence refuting that she was insane when she murdered her husband. We reject defendant's contentions and affirm the judgment.

II

FACTS

From February to April 2010, defendant and her husband, Jose Gomez, frequently argued. They primarily argued about defendant's refusal to take her medication for her mental illness, schizophrenia. Defendant stopped taking her medication in February 2010. She claimed she did not need to take it because "God was helping her with her

¹ Unless otherwise noted, all statutory references are to the Penal Code.

illness.” At the time, she was living with Jose and their two sons, A., age 13, and R., age 11.

During the week before April 11, 2010, defendant became very distant emotionally. Defendant and her sons went to stay at the home of a friend, Ana Paniagoa, for four or five days. While there, defendant did not eat much, and sat in a chair, staring at the wall, or prayed with rosary beads. A. observed that defendant’s schizophrenia had “taken over.” On the last day at Paniagoa’s house, defendant told A. they were going to return home to Jose because she was “back in love with [him] again.”

When defendant and the boys returned home on April 8, 2010, Jose attempted to hug defendant. Defendant pushed him away and told Jose to get away from her. Defendant went to her room and stayed there with the door shut. The next day, defendant called 911 because she wanted to leave with the boys but Jose would not let her. Defendant believed Jose and the boys’ uncle, Randy B., and the boys’ maternal grandmother, Cheryl B., had molested the boys for years. According to A., this was untrue. A. had heard defendant call Jose a “child molester,” and then start swearing at Jose. Jose would tell defendant to stop, and if she continued, he would go outside to get away from defendant.

When the police responded to defendant’s call on April 9, 2010, A. told the officers defendant was mentally ill and needed help. A. explained that defendant was trying to take the boys away from Jose and was very sick. After the officers left without doing anything, defendant tried to take the boys away but A. refused to go. He locked himself and his brother in the car. Jose told defendant to leave the boys alone.

Defendant left and returned about 30 minutes later. She went to her room and stayed there.

At 2:30 a.m. on April 11, 2010, Sheriff's Deputy Paul Kowalski and four other deputies were dispatched to defendant's home in response to defendant's 911 call, reporting a stabbing. Defendant told the 911 operator she killed her husband during a knife fight because she believed he was a child molester and God told her to kill him. While Kowalski and the other deputies were outside defendant's home, the 911 operator asked defendant to come outside. When defendant eventually stepped outside, she was covered in blood.

Kowalski handcuffed defendant. While escorting her to his patrol car, Kowalski asked defendant what had happened. Defendant said, "He broke my arm." Kowalski asked again what happened and defendant said, "We were in a fight." Again Kowalski asked what happened and defendant said, "We've been fighting for many, many, many months." In response, Kowalski asked, "You've been fighting and what happened?" Defendant said, "I think that I killed him." Kowalski asked her how. She replied, "I stabbed him." Kowalski then placed defendant in his patrol car and transported her to the sheriff's station.

At 6:20 a.m., on April 11, 2010, Sheriff's Sergeant Rodriguez and Detective Castillo interviewed defendant at the sheriff's station. When Rodriguez attempted to explain initially that he and Castillo wanted to talk to defendant, defendant said, "I would rather have a defender, someone to defend me. God told me to kill him because he's a

child molester. That's it." Castillo interrupted defendant and read her *Miranda*² rights to her. Defendant said she understood her rights. Before Castillo had a chance to ask if she was willing to waive them, defendant began talking. She said she had already told him the "main thing," but then said that God and the Virgin Mary had told her to kill Jose with a knife because he was a child molester. Defendant explained she knew Jose was a child molester because, when one of her sons was born, Jose kissed the infant's genitals at the hospital. Rodriguez asked defendant where she was when she stabbed Jose. Defendant said she stabbed him while he was asleep in his bed.

After the interview, defendant was transported to the West Valley Detention Center for booking. During the ride, defendant asked where they were going. Rodriguez told her. After a few minutes of silence, she said, "If someone did that to your babies, wouldn't it be strange? Scary, huh? The way he acts with my boys, I don't really like it. Not that it was right what I did, I guess."

Law enforcement officers searched defendant's residence after she was taken from her home. Officers found blood stains on the bed and dresser in the master bedroom. There was a trail of blood from the bedroom, down the hallway, into the kitchen, and then to the living room, where officers found Jose's dead body in a pool of blood. During a search of the rest of the home, officers found A. and R. asleep in a bedroom.

Jose died from massive blood loss caused by over 140 stab wounds, including 70 stab wounds to his back, as well as additional stab wounds to his neck, face, arms, legs,

² *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*)

and chest. The tip of a knife was found imbedded in Jose's right arm bone. The knife, with a three-inch blade and a broken off tip, was found in the kitchen.

Defendant's mother testified at trial that defendant had been mentally ill since her early teens. Around 2008, defendant had a miscarriage, which immensely affected her mental health. Thereafter defendant stopped taking her medication and began drinking heavily. Defendant's friend, Paniagoa, testified that defendant and her boys stayed with Paniagoa for five days, beginning on April 3, 2010. Paniagoa noticed defendant was acting abnormally. Defendant seemed "out of it," and her condition deteriorated while she stayed with Paniagoa.

Defendant's Testimony

Defendant testified that she was currently taking lithium, Risperdal, and trilafton to help her sleep, calm her emotions, and cope with voices she heard. She did not feel as depressed and the voices she heard did not bother her as much. Defendant was molested as a very young girl, primarily by her mother's brother, Jimmy. He molested her for around six years. Later, between the ages of seven and nine years old, a neighbor molested her. Defendant's parents reported it to the police. When defendant was around 13 years old, defendant's father started molesting her.

Defendant and her boys went to stay with Paniagoa the week before April 10, 2010, because defendant was not getting along with Jose and defendant feared Jose would harm her children. Defendant returned home after five days because she could not stay with Paniagoa any longer and had nowhere else to go. After returning home, defendant called the police because she believed Jose had molested the boys and would

do so in the future, but the police did not do anything. Defendant's relationship with Jose did not improve upon returning home. There was a lot of animosity. Jose would not speak to her. He took A. out and this made her suspicious Jose was molesting the boys. She was also suspicious because A. had seemed depressed and R. had been having emotional outbursts.

During the evening of April 10, 2010, defendant looked at a college essay she had recently written. The essay described how she had been sexually abused by her father and another man. When she looked at the essay on the computer, it made her angry and sad. That evening, defendant kneeled in her bedroom, in front of pictures of Jesus and the Virgin Mary, and prayed. Defendant heard voices and had a "feeling" in which God and Mary told her to kill Jose. She heard them tell her Jose was her worst enemy and, because defendant had not done anything about him, she was not "welcome in the kingdom." The voices told her the only way she could make amends was to kill Jose. At that time, Jose was asleep in his bed and the boys were in their room.

Defendant decided to kill Jose. She went to the kitchen and got a knife, which she used to stab Jose. Defendant could not recall how much time elapsed between when she heard God and Mary's voices, and when she stabbed Jose. After getting the knife in the kitchen, defendant went to Jose's bedroom and stabbed him while he was sleeping in his bed, in the dark. Defendant stabbed Jose in the upper part of his body. Jose got up and ran into the living room. Defendant followed him. She was determined to kill him, as instructed by God and Mary. Defendant testified the only reason defendant killed Jose was to protect her boys from him. Defendant believed Jose would molest her boys in the

middle of the night, sometime in the future. Defendant and Jose fought in the living room. Defendant repeatedly stabbed Jose in the back and neck with the knife. Defendant also bit Jose's hands when Jose tried to grab the knife from her. Jose tried to defend himself with a small broom and a fireplace utensil. Defendant continued stabbing Jose in the back while he lay on his stomach on the floor, motionless. She did not know why she continued stabbing him. After she stopped, she got a drink of water and called 911.

III

MIRANDA RIGHTS

Defendant contends her extrajudicial statements made to sheriff's deputies at the Victor Valley sheriff's station were inadmissible because she did not knowingly and intelligently waive her rights to remain silent and to counsel. Defendant claims she claimed she made a clear and unequivocal request for an attorney. Therefore all questioning should have ceased. Nevertheless, officers continued to interrogate her.

The prosecution included in its trial brief a motion in limine seeking admission of defendant's statements made to Sergeant Rodriguez and Deputy Castillo a couple hours after her arrest on April 11, 2010. While defendant was in custody at the sheriff's station, Rodriguez explained to defendant that detectives wanted to talk to her about what had happened. Defendant interrupted and said, "I would rather have a defender, someone to defend me." Right after making this statement, defendant added, "God told me to kill him because he was a child molester." Castillo interrupted defendant and advised her of her *Miranda* rights. Defendant acknowledged she understood her rights. Castillo then asked defendant if, "With these rights in mind are you willing to talk to me?" In

response, defendant said she did not feel like telling the officers the whole story; she already told them the “main thing.” Defendant then continued talking, and said God and the Virgin Mary told her to kill Jose. After talking a couple minutes about what happened, defendant said she did not want to talk anymore and wanted a public defender. She was not questioned further.

The trial court concluded that, because defendant continued talking after requesting an attorney, her request for an attorney was equivocal. Therefore the officers could lawfully ask defendant questions clarifying whether she wished to invoke her right to an attorney. The trial court further ruled that defendant’s statements made after she was advised of her *Miranda* rights were admissible, even though defendant did not expressly state she agreed to waive her rights. The trial court explained that defendant implicitly consented to further interrogation by continuing to speak after stating she understood her *Miranda* rights and after she was asked if she agreed to waive them. On appeal, defendant argues that admitting into evidence defendant’s statements violated her rights against self-incrimination and to counsel. Specifically, defendant challenges the trial court’s finding that her conduct constituted an implied waiver of her *Miranda* rights. We disagree.

In reviewing whether defendant’s statements were elicited in violation of *Miranda*, we apply federal standards. (*People v. Bradford* (1997) 14 Cal.4th 1005, 1033.) Additionally, “we accept the trial court’s resolution of disputed facts and inferences, and its evaluation of credibility, if supported by substantial evidence. [Citation.] Although we independently determine whether, from the undisputed facts and

those properly found by the trial court, the challenged statements were illegally obtained (*ibid.*), we “‘give great weight to the considered conclusions” of a lower court that has previously reviewed the same evidence.’ [Citations.]” (*People v. Wash* (1993) 6 Cal.4th 215, 235-236.) Once the facts have been determined, we review the decision to admit the statements under the de novo standard of review, where we independently determine whether the statements were lawfully admitted into evidence. (*People v. Weaver* (2001) 26 Cal.4th 876, 918.)

In *Miranda v. Arizona*, *supra*, 384 U.S. 436, the United States Supreme Court adopted a set of prophylactic measures to protect the Fifth Amendment right against self-incrimination from the “inherently compelling pressures” of custodial interrogation. (*Id.* at p. 467.) To counteract the coercive pressure, the holding of *Miranda* requires police officers to warn a suspect prior to questioning that he or she has the right to remain silent, and a right to the presence of any attorney. (*Id.* at p. 444.) After the warnings are given, if the suspect requests counsel at any time during the interview or indicated that he or she wishes to remain silent, the suspect shall not be subject to further questioning and the interrogation must cease until a lawyer has been made available or the suspect reinitiates conversation. (*Edwards v. Arizona* (1981) 451 U.S. 477, 484-485.)

A suspect may waive the right to remain silent and the right to have an attorney present. (*Maryland v. Shatzer* (2010) 559 U.S. 98, 104.) The standards are the same as to both Fifth and Sixth Amendment rights. (*Berghuis v. Thompkins* (2010) 560 U.S. 370, ____ [130 S.Ct. 2250, 2260].) Once a suspect has waived her *Miranda* rights, any subsequent assertion of the right to counsel or to remain silent must be articulated

“sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney.” (*Davis v. United States* (1994) 512 U.S. 452, 459.) When a suspect makes an ambiguous or equivocal statement, or makes no statement after admonishment, it is often good police practice for the interviewing officers to clarify whether or not she wants an attorney. (*Id.* at p. 461.) The police are not required to end the interrogation. (*Berghuis, supra*, 560 U.S. 370 [130 S.Ct. at p. 2260].)

The *Davis* requirement for an unambiguous invocation has been applied to *pre-waiver* statements referring to counsel which are ambiguous or equivocal. (See *People v. Farnam* (2002) 28 Cal.4th 107, 181 [preadmonition statement that defendant would not answer questions]; *People v. Johnson* (1993) 6 Cal.4th 1, 25-26 [preadmonition statement requesting that the interview not be recorded as defendant did not wish to incriminate himself]; *United States v. Rodriguez* (9th Cir. 2008) 518 F.3d 1072, 1079–1080.) The court in *Nelson v. McCarthy* (9th Cir. 1980) 637 F.2d 1291 (*Nelson*), concluded that ambiguity relating to both pre-and post-waiver assertions of *Miranda* rights required clarification. (*Id.* at pp. 1296-1297.) Based on these authorities, “[t]he rule that interrogation must cease because the suspect requested counsel does not apply if the request is *equivocal*; “[r]ather, the suspect must *unambiguously* request counsel.”” (*People v. Davis* (2009) 46 Cal.4th 539, 587, citing *People v. Sapp* (2003) 31 Cal.4th 240, 266, italics added, quoting *Davis v. United States, supra*, 512 U.S. at p. 459.) Whether a suspect has invoked her right to counsel is an objective inquiry. (*Davis v. United States, supra*, 512 U.S. at p. 459.) If a suspect makes a reference to an attorney

that is an ambiguous or equivocal prewaiver statement, in that a reasonable officer in light of the totality of the circumstances would have understood only that the suspect might be invoking the right to counsel, immediate cessation of questioning is not required. (*Id.* at pp. 459, 461-462; *People v. Gonzalez* (2005) 34 Cal.4th 1111, 1124-1125.)

In the instant case, before the detectives advised defendant of her *Miranda* rights and began interrogating her, defendant stated she wanted a public defender to represent her. The totality of circumstances cast doubt on whether defendant was invoking her right to an attorney, because immediately after defendant said she wanted a defender, she made a statement implicating herself in the murder. There was no evidence officers had begun interrogating her when she made the statement or that officers used improper police tactics which led to defendant's confession. The statement was a voluntary, uncoerced, and spontaneous utterance. (*People v. Clark* (1993) 5 Cal.4th 950, 985-986.)

Defendant's initial statement, indicating she wanted a defender, conflicted with her next spontaneous statement, in which she continued speaking without an attorney and implicated herself in the murder. Since Castillo had not yet admonished defendant, he appropriately clarified the ambiguity by immediately advising her of her *Miranda* rights. (*People v. Johnson, supra*, 6 Cal.4th at p. 27.) Once defendant received *Miranda* warnings, she was free to exercise her own volition in deciding whether or not to proceed with the interrogation or terminate the interview until provided with an attorney. (*Oregon v. Elstad* (1985) 470 U.S. 298, 308.)

Defendant argues that advising her of her *Miranda* rights after she invoked her right to an attorney did not render her subsequent statements voluntary under *Miranda*. Defendant asserts the circumstances in the instant case were akin to “question-first-advise-later” situations deplored under *Missouri v. Seibert* (2004) 542 U.S. 600, 613, in which police obtained incriminating statements from the defendant before advising her of her *Miranda* rights. But in the instant case, the officers did not interrogate defendant before she spontaneously confessed to murdering Jose. This is not a case of “question-first-advise-later.” Right after defendant voluntarily confessed, Castillo interrupted her and apprised her of her *Miranda* rights. Defendant stated she understood her rights and again, without any compulsion, voluntarily began talking about the case. Although defendant did not expressly waive her rights, it could be reasonably inferred she did so based on her immediate discussion of the case after stating she understood her rights. Under the totality of the circumstances, we conclude defendant’s statements made before and after waiving her *Miranda* rights were properly admitted into evidence as voluntary, uncoerced statements.

IV

EXAMINATION BY A PROSECUTION MENTAL HEALTH EXPERT

Defendant contends the trial court abused its discretion and violated her Fifth and Sixth Amendment rights by ordering her examined by the prosecution’s psychiatric expert, Dr. Sangdahl, and then allowing the prosecution to introduce evidence of defendant’s refusal to be interviewed by Sangdahl.

A. Sanity Trial Factual and Procedural Background

Defendant entered a plea of “not guilty by reason of insanity.” Under section 1027 and Evidence Code section 730, the trial court ordered defendant examined by two court-appointed mental health experts, Assandri and Miller, both licensed clinical and forensic psychologists. The prosecution filed a motion for a court-ordered examination of defendant under section 1054.3. The prosecution requested the court to order defendant examined by a psychiatrist selected by the prosecution “to address the issue of the Defendant’s sanity.” Defendant objected on the grounds such an examination infringed upon her Fifth Amendment right against self-incrimination and Sixth Amendment right to counsel. Defendant requested that if the court ordered the examination, defense counsel and an investigator be permitted to be present during the clinical interview to protect defendant’s right against self-incrimination, to insure the exam remained within the scope of a proper examination, and to videotape defendant’s clinical interview.

The trial court granted the prosecution’s motion for an examination by a psychiatrist selected and retained by the prosecution. The court did not rule on defendant’s requests for her attorney and an investigator to be present at the exam and videotape it. Defense counsel warned the court that defendant would “refuse to cooperate with the examination.” In accordance with the court’s ruling, the prosecution’s mental health expert, Sangdahl, went to the jail to evaluate defendant on June 4, 2011. Defendant refused to be interviewed.

Defendant moved in limine for an order excluding evidence of Sangdahl's attempt to examine defendant on the ground evidence of her refusal to be examined by Sangdahl constituted *Griffin*³ error. Defendant argued that, in the absence of safeguards protecting her constitutional rights, her rights against self-incrimination and to counsel outweighed the prosecution's interest in having its own expert examine defendant. The trial court denied defendant's motion to exclude evidence of Sangdahl's attempt to examine her. The court reasoned that Sangdahl was permitted to examine defendant under section 1054.3, subdivision (b), pursuant to court order. Therefore evidence of defendant's refusal to allow the examination was admissible.

During the sanity trial, court-appointed mental health experts, Assandri and Miller testified that, in their opinions, defendant was legally insane at the time of the murder. Sangdahl testified that he attempted to interview defendant at the jail but she refused to be interviewed on the advice of her attorney. During Sangdahl's testimony, defendant moved for a mistrial on the ground Sangdahl's testimony that defendant declined to be interviewed constituted *Griffin* error. The trial court denied the motion, concluding that the court had already ruled that the court-authorized examination by a prosecution expert was permissible under section 1054.3 and evidence that defendant refused to cooperate did not constitute *Griffin* error because there was no violation of defendant's Fifth Amendment right against self-incrimination or her Sixth Amendment right to counsel.

³ *Griffin v. California* (1965) 380 U.S. 609.

B. Discussion

Defendant argues that factors demonstrating a need for the examination were outweighed by her Fifth Amendment right against self-incrimination. Defendant asserts that the following factors weighed against allowing the exam: (1) defendant, rather than the prosecution, had the burden of proving insanity, (2) the experts, who would testify defendant was insane, were court-appointed, (3) the court-appointed experts were equally available to both parties before and after they examined defendant, and (4) defendant did not intend to use her own expert to examine defendant or testify on behalf of defendant. Defendant argues that these factors outweighed the following factors asserted by the prosecution in favor of allowing a prosecution expert exam: (1) the two court-appointed experts indicated they would testify defendant was insane based on what the prosecutor described as “rather bizarre conclusions,” and (2) the two court-appointed experts were psychologists, not medical doctors or psychiatrists. The only purpose of the exam, defendant asserts, was to bolster the prosecution expert’s opinion that defendant was sane at the time of the murder. Therefore infringement of her constitutional rights by allowing the examination constituted an arbitrary and capricious abuse of discretion. We disagree.

There was no abuse of discretion or violation of defendant’s constitutional right against self-incrimination or right to counsel. In 2009, the Legislature amended section 1054.3 “to add a new subdivision (b), expressly authorizing orders for compelled examination. (Stats.2009, ch. 297, § 1.)” (*Sharp v. Superior Court* (2012) 54 Cal.4th 168, 172 (*Sharp*)). Subdivision (b)(1) provides that “[u]nless otherwise specifically addressed by an existing provision of law, whenever a defendant in a criminal action . . .

places in issue his or her mental state at any phase of the criminal action . . . through the proposed testimony of any mental health expert, upon timely request by the prosecution, the court may order that the defendant . . . submit to examination by a prosecution-retained mental health expert.”

The court in *Sharp, supra*, 54 Cal.4th 168, construed section 1054.3, subdivision (b)(1), as applying not only to the guilt phase of a criminal action, but to a trial of the defendant’s sanity after a defendant has pled not guilty by reason of insanity (NGI plea). (*Sharp, supra*, 54 Cal.4th at p. 173.) During a sanity trial, the court’s appointment of mental health experts to testify as to a defendant’s sanity is governed by section 1027. Under section 1027, the trial court is required to select and appoint at least two psychiatrists or psychologists to examine the defendant and testify, if requested, at the sanity trial. (§ 1027, subd. (a).) (*Sharp, supra*, 54 Cal.4th at p. 173.) Under section 1054.3, subdivision (b)(1), the trial court also has discretion to order the defendant to submit to an examination by an expert selected and retained by the prosecution “whenever the defendant has put his or her mental condition at issue,” including when the defendant enters a NGI plea. (*Sharp, supra*, 54 Cal.4th at p. 174.)

Defendant argues that a compelled sanity examination in the instant case violates her constitutional rights against incrimination and to counsel. But, as noted by the California Supreme Court in *Sharp, supra*, 54 Cal.4th at page 174, regarding section 1054.3, subdivision (b): “[F]ederal courts have held a compelled “sanity examination” is constitutionally permitted when the defendant “asserts the insanity defense and introduces supporting psychiatric testimony.”” (*Sharp, supra*, 54 Cal.4th at p. 174.)

This is because “A criminal defendant who tenders his or her mental state as a guilt or penalty issue waives the Fifth Amendment privilege against self-incrimination, and the Sixth Amendment right to counsel, “to the extent necessary to permit a proper examination of that condition.”” (Maldonado v. Superior Court (2012) 53 Cal.4th 1112, 1116-1117 (Maldonado), quoting People v. Carpenter (1997) 15 Cal.4th 312, 412.) In addition, “the Fifth Amendment does not provide a privilege against the compelled ‘disclosure’ of self-incriminating materials or information, but only precludes the use of such evidence in a criminal prosecution against the person from whom it was compelled.” (Maldonado, at p. 1134.) We therefore conclude the trial court’s order that defendant submit to an examination by the prosecution’s mental health expert did not violate the Fifth Amendment.

Nor would the Fifth Amendment have been violated by defendant's act of answering Sangdahl’s questions or making statements to the expert in the course of the ordered examination, had she complied with the court’s order. The Fifth Amendment would have come into play only if and when defendant’s statements to the prosecution expert were used against her at trial, and only to the extent that she had not waived her privilege by tendering her mental state. Since defendant pled NGI in this case, there was no violation of the Fifth Amendment. Similarly, defendant waived her Sixth Amendment right to counsel by placing her mental state in issue. (Maldonado, supra, 53 Cal.4th at pp. 1116-1117; People v. Gonzales (2011) 51 Cal.4th 894, 929 & fn. 18.)

Defendant argues that the People’s reliance on Maldonado is misplaced because the defendant in Maldonado was not subjected to a court-ordered mental examination by

two court-appointed experts during the insanity phase, as here. In *Maldonado* the defendant tendered his mental state as to a murder defense during the guilt phase and informed the prosecution that he intended to introduce evidence of the defense through designated mental health experts. (*Maldonado, supra*, 53 Cal.4th at p. 1117.) But, as the court in *Sharp* noted, the drafters of the amendment, adding subdivision (b) to section 1054.3, “viewed the amendment as authorizing examinations relating to NGI pleas as well as to guilt and penalty phase mental health defenses.” (*Sharp, supra*, 54 Cal.4th at p. 175.) And even though the People may have less need for an examination by their own expert when the defendant has pleaded NGI, the trial court cannot “ignore the statute’s broadly inclusive language authorizing a compelled examination ‘whenever’ the defendant has put his or her mental state at issue ‘at any phase of the criminal action’ through the proposed testimony of a mental health expert. (§ 1054.3(b)(1).)” (*Sharp, supra*, 54 Cal.4th at p. 175.)

In the instant case, it was anticipated that defendant would rely on testimony by the court-appointed mental health experts, both of whom concluded defendant was insane at the time of the murder. The trial court had the discretion to authorize a compelled examination by a prosecution mental health expert, and doing so was not an abuse of discretion or a violation of defendant’s constitutional rights. “In deciding how to exercise its section 1054.3(b)(1) discretion, the trial court may consider the extent to which such an additional examination is needed, in light of any existing court appointments, to rebut the defense’s proposed expert testimony. That appointments have already been made

under section 1027 thus may influence, but does not preclude, the decision to order an examination under section 1054.3(b)(1).” (*Sharp, supra*, 54 Cal.4th at p. 176.)

Here, both of the court-appointed mental health experts concluded defendant was insane. Therefore, there was little, if any, need for defendant to retain an additional expert to evaluate defendant and testify on her behalf. The prosecution, on the other hand, was deprived of effectively refuting the expert evidence supporting a finding of insanity, unless the trial court ordered under section 1054.3, subdivision (b)(1), that defendant submit to evaluation by a prosecution retained mental health expert. We cannot say that under such circumstances, ordering the exam violated defendant’s constitutional rights or was an abuse of discretion.

Defendant argues the exam was unnecessary, since the prosecution expert, Sangdahl, had all the records and information needed to evaluate defendant. We disagree. The interview provided a significant opportunity to assess and obtain additional insight into defendant’s credibility and mental state.

We also reject defendant’s contention that the trial court violated her right to counsel by rejecting her request to allow her attorney to monitor and videotape her interview by Sangdahl. Neither section 1054.3 nor any other authority required that a recording be made of the clinical interview or that defense counsel be allowed to attend the interview. Furthermore, there was substantial risk that if counsel were present, he would prevent defendant from answering questions he considered damaging to the defense or otherwise influence defendant’s responses, thus preventing the expert from forming an accurate assessment of defendant’s mental state. While counsel would

naturally want to protect his client, his intervention would undermine the entire purpose of the compelled interview, yet serve no valid purpose because defendant waived her Fifth Amendment privilege against self-incrimination, her Sixth Amendment right to counsel, and any due process claim “““to the extent necessary to permit a proper examination.””” (*Maldonado, supra*, 53 Cal.4th at pp. 1116-1117.) Accordingly, the trial court did not act arbitrarily, capriciously, or in a patently absurd manner by not permitting a recording and counsel’s attendance.

Because there was no violation of defendant’s constitutional rights or abuse of discretion in rejecting defendant’s request that her attorney monitor and videotape her interview by Sangdahl, there was no *Griffin* error. Under *Griffin*, the prosecutor is prohibited from commenting when the defendant exercises his or her right to remain silent. (*Griffin, supra*, 380 U.S. at p. 615.) Here, defendant waived her Fifth and Sixth Amendment rights by placing her mental state at issue when she pled NGL. Furthermore, defendant forfeited any such objection by not raising it in the trial court. (*People v. Lancaster* (2007) 41 Cal.4th 50, 84.)

V

SUFFICIENCY OF EVIDENCE OF SANITY

Defendant contends the evidence was insufficient to rebut her claim that she was legally insane when she murdered Jose. We disagree.

A. *Sanity Phase Evidence*

Before the guilt phase of the trial, defendant entered a plea of not guilty by reason of insanity. After the jury found defendant guilty of first degree murder, in a separate

subsequent proceeding, the jury found defendant was sane at the time she murdered Jose. During the sanity phase of the trial, the following evidence was presented.

Dr. Assandri's Testimony

Dr. Assandri, a licensed psychologist at Patton Forensic State Hospital, was appointed by the trial court to conduct a psychiatric forensic evaluation of defendant. Assandri reviewed defendant's arrest report, jail records detailing defendant's conduct during incarceration, and records of defendant's psychiatric history, beginning when she was a juvenile. Assandri interviewed defendant at the jail on May 29, 2010.

Defendant's mental health records indicated that five or six times defendant had been detained in a psychiatric hospital, and had been diagnosed with major depression with psychotic features and substance abuse. According to Assandri, it was common for a person with a diagnosis of psychosis to experience auditory and visual hallucinations, including hearing voices, being paranoid, and having delusions. Defendant's mental health records and interview revealed that defendant had for many years harbored a belief that Jose was molesting their two sons. This belief arose from defendant reportedly observing Jose kissing the boys' genitals at birth.

Assandri concluded from his evaluation of defendant that she suffered from bipolar disorder with psychotic delusions, including delusions of religiosity. Defendant suffered from this condition at the time of the murder and was not sane when she killed Jose. Assandri believed that defendant understood she had killed Jose and had acknowledged this was not right. He opined defendant's motivation was key in understanding her mental state at the time of the murder. Her motivation was to protect

her children, coupled with delusions of religiosity. In Assandri's opinion, defendant's delusional motivation was the driving force and she did not appreciate the wrongfulness of her act of killing Jose.

Assandri reviewed Sangdahl's report and noted that Sangdahl concluded defendant appreciated the wrongfulness of her acts based on defendant asking the police for an attorney. Assandri asked defendant why she made the request and defendant explained to Assandri that she wanted an attorney to help make people understand why she did what she did and that she had a right to do it.

Dr. Miller's Testimony

Miller was also a licensed psychologist appointed by the trial court to conduct a psychiatric forensic evaluation of defendant. He likewise reviewed defendant's arrest report, jail records, and records of defendant's psychiatric history. Miller interviewed defendant at the jail on August 20, 2010.

Miller concluded defendant was suffering from DSM Axis one mental disorder of bipolar or schizo-affective disorder and DSM Axis two paranoid personality disorder.⁴ Miller further concluded that defendant was legally insane when she killed Jose. Miller based his opinion on defendant's long history of mental illness, dating back to when she was 14 years old, during which she exhibited acute symptoms of psychosis, including

⁴ "Known by the acronym 'DSM,' the 'Diagnostic and Statistical Manual of Mental Disorders [is published] by the American Psychiatric Association. "The DSM-IV is recognized by the courts as a standard reference work containing a comprehensive classification and terminology of mental disorders.'"" (*People v. Jones* (2013) 57 Cal.4th 899, 945, fn. 16, quoting *People v. Mills* (2010) 48 Cal.4th 158, 205, fn. 17.)

distortion of reality, hallucinations, and delusions. Miller also based his conclusions on defendant's children's and coworkers' statements that, during the days preceding the murder, defendant appeared to become increasingly agitated and upset. This culminated in defendant experiencing auditory hallucinations of the Virgin Mary and Jesus Christ ordering her to kill Jose. Miller concluded defendant did not know that killing Jose was wrong because she was acting on the fixed delusional belief Jose was molesting her children and it was the will of Christ that she end the abuse.

Dr. Sangdahl's Testimony

Sangdahl, who was a psychiatrist retained by the prosecution as a mental health expert, testified that he reviewed defendant's 911 call, police reports, defendant's recorded statements to police, her medical and psychiatric records, and the reports of court-appointed experts, Assandri and Miller. On June 4, 2011, Sangdahl attempted to interview defendant at the jail but she refused to be interviewed on the advice of her attorney. Defendant told Sangdahl, "My attorney told me not to say anything." Sangdahl concluded defendant suffered from an antisocial personality disorder, characterized by impulsiveness and threatening behavior. Sangdahl also concluded defendant was sane at the time of the murder, based on the 911 call defendant made immediately after killing Jose and based on her statement to the police while being transported to the detention center.

Sangdahl concluded the 911 call showed that defendant was aware that killing Jose was wrong. Defendant indicated she called 911 in order to remove Jose's body and clean up the mess from the murder before her children woke up and saw it. Sangdahl

believed this showed that, at the time of the 911 call, defendant “knew that something disturbing had occurred and that she wanted it cleaned up.” Sangdahl also based his conclusion defendant was legally sane on the following statement defendant made to the police while being transported to the station: ““If someone did that to your babies [kissing their genitals at birth], wouldn’t it be strange? Scary, huh? The way that he acts with my boys, I really don’t like it.”” She then added, ““Not that it was right what I did, I guess.”” Sangdahl concluded this demonstrated that defendant was aware killing Jose was wrong.

B. Applicable Law

A defendant who pleads not guilty by reason of insanity bears the burden of proving he or she was incapable of knowing or understanding the nature and quality of the act or of distinguishing right from wrong at the time of the offense. (§ 25, subd. (b); *People v. Skinner* (1985) 39 Cal.3d 765, 769.) The defendant bears the burden of proof. (*People v. Drew* (1978) 22 Cal.3d 333, 351, disapproved on another ground in *Skinner*, at p. 769.) On appeal the substantial evidence standard of review applies to the trier of fact’s finding on the sanity issue. (*People v. Belcher* (1969) 269 Cal.App.2d 215, 220.) An appellate court may not disturb the finding ““if there is any substantial and credible evidence in the record to support such finding.”” (*Ibid.*)

Here, two experts testified defendant was insane and one expert testified she was sane. “““The chief value of an expert’s testimony in this field, as in all other fields, rests upon the *material* from which his opinion is fashioned and the *reasoning* by which he progresses from his material to his conclusion””” (*People v. Coogler* (1969) 71

Cal.2d 153, 166.) Thus, the finder of fact is “not automatically required to render a verdict which conforms to the expert opinion” and may even properly find the “defendant to be sane in the face of contrary unanimous expert opinion.” (*People v. Drew, supra*, 22 Cal.3d at p. 350.) The finder of fact may also properly reject an expert’s opinion if the expert fails to explain the reasoning underlying the opinion. (*Ibid.*) In the instant case, Sangdahl’s expert opinion testimony was sufficient to rebut defendant’s claim that she was insane at the time of the murder.

C. Discussion

As to the first sanity element, both Miller and Sangdahl testified that defendant knew the nature and quality of her act of killing Jose. Defendant knew she was killing Jose and ending his life. Miller and Sangdahl’s testimony was more than sufficient to support the trial court’s finding as to the first sanity element, that defendant knew the nature and quality of her act.

There was also sufficient evidence supporting the second sanity element, that defendant knew right from wrong. Even though the two court-appointed experts, Assandri and Miller, concluded defendant was insane at the time of the murder based on the second element, Sangdal’s testimony was sufficient to support a contrary finding. Sangdahl testified that defendant’s 911 call reflected defendant’s state of mind at the time of the murder because the call occurred right after the incident. Sangdahl further concluded the call reflected defendant was capable of understanding the nature and quality of her acts, and that she understood what she had done was wrong.

Sangdahl based his opinion on the fact that during defendant's 911 call, she indicated that she was calling because she wanted the police to remove the evidence of Jose's murder and clean up the mess before her children awoke. This, in conjunction with other evidence, such as her statements to officers, demonstrates defendant knew that the murder was wrong and therefore she was sane. Sangdahl explained that her statements during the call reflected that defendant wanted Jose dead and wanted his body removed before her children woke up, because she knew killing Jose was wrong and she did not want her children to see his dead body. Sangdahl also based his opinion on defendant's statement to officers regarding killing Jose, conceding: "Not that it was right what I did, I guess." Sangdahl testified that, with regard to this statement, "this is the second prong of the two prongs that really kind of clarifies or nails the issue. I mean, there are other things that we can say that alludes to this particular issue to formulate my opinion, but this definitely confirms it."

Sangdahl explained that, even though defendant may have been responding to voices telling her to kill Jose, she knew she had the option of reporting the matter to the police rather than killing Jose. In fact, the day before killing Jose, defendant called the police and reported that Jose was molesting her sons, but the police did not do anything. Defendant thereafter chose to take the matter into her own hands and kill Jose. Sangdahl concluded that defendant therefore knew what she was doing when she killed Jose, knew that it was wrong to kill him, and killed Jose nevertheless.

Even though two court-appointed experts testified that, in their opinion, defendant was insane when she killed him, Sangdahl provided expert witness testimony to the

contrary, supporting the jury's finding that defendant was sane at the time of the murder. We resolve neither credibility issues nor evidentiary conflicts. (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.) Even when there is a significant amount of countervailing evidence, the testimony of a single witness is sufficient to uphold the jury's finding of sanity. (*People v. Barnwell* (2007) 41 Cal.4th 1038, 1052.) Sangdahl's expert witness testimony and his rationale for concluding defendant was sane was founded on a reasonable interpretation of the evidence. The evidence was therefore sufficient to rebut a finding of insanity and support the jury's finding that defendant was sane at the time of the murder.

VI

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

CODRINGTON

J.

We concur:

RAMIREZ

P. J.

HOLLENHORST

J.